

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Forrester, <i>et al.</i>)	File Number EB-02-OR-354
Licensee of KLYR(AM))	NAL/Acct. No. 200332620010
Clarksville, Arkansas)	FRN: 0003-7846-91
)	

FORFEITURE ORDER

Adopted: June 18, 2004

Released: June 22, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand four hundred dollars (\$4,400) to Forrester *et al.* (“Forrester”), licensee of KLYR(AM), Clarksville, Arkansas, for willful violation of Section 73.49 of the Commission’s Rules (“Rules”)¹. The noted violation involved failure to maintain an effective locked fence around the base of the antenna tower for radio station KLYR(AM).

2. On February 19, 2003, the Commission’s New Orleans, Louisiana Field Office (“New Orleans Office”) released a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Forrester in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.49 of the Rules.² Forrester filed a response on March 20, 2003.

3. In its response to the *NAL*, Forrester denies that it willfully violated Section 73.49 of the Rules. Forrester seeks cancellation or significant reduction of the forfeiture on the following grounds: physical circumstances precluded access to the tower; Forrester was in the process of addressing the violation at the time the agent arrived; the licensee has a history of compliance with the Commission’s Rules; and, an inability to pay.

II. BACKGROUND

4. On November 6, 2002, an agent from the New Orleans Office inspected radio station KLYR(AM). At the time of the inspection, the fence around the field in which the tower was located had numerous openings with no fencing, affording unrestricted access to the tower. In addition, there was no fence at the base of the tower. The tower had radio frequency potential at the base.

¹ 47 C.F.R. § 73.49.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332620010 (Enf. Bur., New Orleans Office, released February 19, 2003).

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining Forrester’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶

6. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base be enclosed within effective locked fences or other enclosures. Forrester states that the transmitter site is bordered by water, pastureland, and a highway, that there is no sidewalk or other pedestrian access from which passersby would gain access to the site, that a “No Trespassing” sign is posted on the pasture, and that there are no nearby “parks, picnic grounds or other public facilities” to help induce members of the general public or uninvited guests onto the site. However, these assertions do not mitigate the fact that Forrester failed to demonstrate that there was an effective locked fence or other enclosure surrounding the base of the tower and establish that it complied with the requirements of Section 73.49 of the Commission’s Rules. Accordingly, we find that Forrester willfully⁷ violated Section 73.49.

7. The Commission may reduce a forfeiture based on a licensee’s good faith, if the company proves that it began a process to correct the violation charged before Commission involvement.⁸ Here, Forrester states that at the time the FCC inspector arrived, a three-person crew was at the site conducting work on the KLYR tower and, within 24 hours after the inspection, a new fence was installed at the site surrounding the tower. Thus, Forrester appears to have been acting in good faith to correct the violation prior to the Commission inspection and a reduction of the forfeiture on this basis is warranted.

8. Forrester offers no evidence to support its inability to pay claim. According to Forrester, “KLYR is a financially struggling AM station serving a very small and economically depressed area,” and that the station is operating “in the face of serious financial difficulties.” Paragraph 10 of the *NAL* sets forth the information necessary to substantiate an inability to pay claim. Further, the Commission has

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸ *See A-O Broadcasting Corp.*, File No. EB-01-DV-334, NAL/Acct. No. 200332800001 (Enf. Bur. 2003); *see also Barinowski Investment Co.*, 18 FCC Rcd 25067, 25069 (2003).

determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. Forrester has failed to provide the required information, including its gross revenues. Accordingly, Forrester has failed to demonstrate an inability to pay the forfeiture.

9. Finally, in support of its request for cancellation or reduction, Forrester states that it has a long history of compliance with FCC rules and that KLYR has only been cited for one technical rule violation, 19 years ago, in over 50 years as a licensee. We have reviewed Commission records and concur.

10. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted because of Forrester's general history of compliance with the Commission's Rules and its good faith efforts to cure the violation prior to Commission involvement. Accordingly, the forfeiture amount is reduced from seven thousand dollars (\$7,000) to four thousand four hundred dollars (\$4,400).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act⁹, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules¹⁰, Forrester ET AL, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand four hundred eighty dollars (\$4,400) for its willful violation of Section 73.49 of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules¹¹ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332620010, and FRN: 0003-7846-91 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹³

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹ 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Forrester ET AL, P.O. Box 188, Clarksville, Arkansas 72830 and a copy to its counsel, Lawrence Bernstein, Esq., Law Offices of Lawrence Bernstein, 1818 N Street, NW, Suite 700, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau